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AZ CORP COMMISSION  
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Attorneys for Southwest Energy Efficiency Project  
and Western Resource Advocates

**BEFORE THE ARIZONA CORPORATION COMMISSION**

MIKE GLEASON, CHAIRMAN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF  
ARIZONA PUBLIC SERVICE COMPANY FOR  
A HEARING TO DETERMINE THE FAIR  
VALUE OF THE UTILITY PROPERTY OF THE  
COMPANY FOR RATEMAKING PURPOSES,  
TO FIX A JUST AND REASONABLE RATE OF  
RETURN THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP SUCH  
RETURN, AND TO AMEND DECISION NO.  
67744

Docket No. E-01345A-05-0816  
E-01345A-05-0826  
E-01345A-05-0827

**WRA/SWEEP EXCEPTIONS  
TO THE RECOMMENDED  
OPINION AND ORDER**

IN THE MATTER OF THE INQUIRY INTO  
THE FREQUENCY OF UNPLANNED  
OUTAGES DURING 2005 AT PALO VERDE  
NUCLEAR GENERATING STATION, THE  
CAUSES OF THE OUTAGES, THE  
PROCUREMENT OF REPLACEMENT POWER  
AND THE IMPACT OF THE OUTAGES ON  
ARIZONA PUBLIC SERVICE COMPANY'S  
CUSTOMERS

IN THE MATTER OF THE AUDIT OF THE  
FUEL AND PURCHASED POWER  
PRACTICES AND COSTS OF THE ARIZONA  
PUBLIC SERVICE COMPANY.

Arizona Corporation Commission  
**DOCKETED**

MAY 15 2007

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1                                   **WESTERN RESOURCE ADVOCATES'**  
2                                   **EXCEPTIONS TO THE RECOMMENDED OPINION AND ORDER**

3                   Western Resource Advocates (WRA) submits the following exceptions to the  
4 Recommended Opinion and Order (ROO) in the Arizona Public Service Company (APS) rate  
5 case.

6                   WRA proposes that the ROO be clarified in several reports. In addition, WRA urges the  
7 Commission to substantively modify the Order as explained below.

8                   **I.       SUGGESTED CLARIFICATIONS.**

9                   **a)       Add an Ordering Paragraph Adopting the Climate Change Planning**  
10                   **Process.**

11                   The ROO adopts the climate change management plan, carbon emission reduction study,  
12 and commitment and action plan with public input and Commission review as recommended by  
13 WRA (ROO, p. 86, lines 3 – 6). The Ordering Paragraphs do not appear to include this finding.  
14 WRA requests that the Ordering Paragraphs explicitly adopt this activity, consistent with the  
15 narrative in the Order:

16                   ADD: IT IS FURTHER ORDERED that Arizona Public Service Company shall prepare  
17 a climate change management plan, carbon emission reduction study, and commitment  
18 and action plan with public input and Commission review as proposed by Western  
19 Resource Advocates.

20                   **b)       Add an Ordering Paragraph Requiring the Filing of a Renewable Energy**  
21                   **Acquisition Plan.**

22                   The ROO (p. 93, lines 12-13) indicates that APS is to file a renewable energy acquisition  
23 plan as discussed in WRA's testimony. However, there does not appear to be a corresponding  
24 Ordering Paragraph:

25                   ADD: IT IS FURTHER ORDERED that APS shall file for Commission review, within 4  
months of the date of this Decision, a plan for acquiring renewable energy and that, prior  
to filing the plan, APS shall consult, in a collaborative manner, with interested parties to  
this case to obtain input on development of the plan.

1           **c) Clarify the Commission's Intent Regarding the RES.**

2           The ROO is unclear as to whether this Order requires APS to comply with the provisions  
3 of the Renewable Energy Standard rule as adopted in Decision No. 69127 regardless of whether  
4 that rule is certified by the Attorney General or becomes the subject of litigation. The narrative  
5 on page 94, lines 14 to 16, states: "Given APS' commitment, the requirement in the RES rule  
6 and our adoption of that requirement in this Decision, and our intent to hold APS to that  
7 commitment, it is not necessary to mandate additional procurements or a specific procurement  
8 schedule at this time."<sup>1</sup> This sentence could be interpreted to mean that the Order in this rate  
9 case has adopted the requirements of the RES for APS, but there is no explicit discussion of  
10 adopting such a policy. WRA requests that the ROO be clarified so that it clearly applies the  
11 provisions of the RES rules to APS in this Order.

12           **II. MODIFICATIONS TO THE RECOMMENDED OPINION AND ORDER.**

13           WRA urges the Commission to make several modifications to the Order as explained  
14 below.

15           **a) Act Now to Increase the Use of Renewable Energy as a Hedge Against High  
16 Natural Gas Prices.**

17           WRA recommended, among other things that, to implement a long term hedge against  
18 high natural gas prices, the Commission direct APS to seek to acquire 1,300 GWH per year of  
19 low cost, stably priced renewable energy under long term contracts starting within the period  
20 2008 through 2010 and continuing for at least 15 years. WRA's recommendations also include  
21 regular reporting requirements (direct testimony of David Berry, pp. 10-11). The ROO does not  
22 accept WRA's recommendation but makes the following points, among others (p. 92, line 21  
23 through p. 93, line 17):  
24  
25

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<sup>1</sup> Similar wording appears in Finding of Fact No. 63 and in the Ordering Paragraph on page 150, lines 16-19.

1           1.       APS should be seeking low cost, stably priced renewable energy under  
2 long term contracts to hedge against and to limit APS' and the ratepayers' exposure to  
3 high natural gas prices over the next 15 years (p. 92, lines 21-23).

4           2.       APS' recent rate increase requests were prompted by rising fuel and  
5 purchased power costs (p. 92, lines 23-24).

6           3.       APS has little incentive to replace natural gas with renewable energy (p.  
7 92, lines 25-26).

8           4.       The evidence from this hearing indicates that the cost of renewable energy  
9 is competitive (p. 93, lines 9-10).

10          5.       APS has a duty to obtain or generate power that is reliable, cost-efficient,  
11 and reasonably priced (p. 93, lines 10-11).

12          6.       The record in the current rate case supports a finding that the requirement  
13 contained in the Renewable Energy Standard (RES) rule is appropriate for APS at this  
14 time. Accordingly, no specific target in this proceeding is adopted beyond the RES  
15 requirements (p. 93, lines 5-7).

16       The last point is inconsistent with the previous five. WRA urges the Commission to  
17 adopt the 1,300 GWH target and reporting requirements for the reasons cited in items 1 through  
18 5 in the ROO. In addition to the arguments presented in the ROO, the Commission should also  
19 consider the following:

- 20       • Unless the Commission requires APS to comply with the RES rule through this rate  
21 case Order, the RES is not yet in force:
    - 22       ○ The RES rule has, as of the date of this filing, not been certified by the Attorney  
23 General.
    - 24       ○ There is no guarantee that the RES rule would be unchallenged in court.
- 25

- 1       • The amount of renewable energy from low cost, stably priced resources contemplated  
2       by the RES in its early years is far too small to provide an effective hedge for APS  
3       against high natural gas prices over the next 5 to 10 years (WRA initial brief, p. 6).
- 4       • The Ordering Paragraph on page 150, lines 10-12, directs APS to “seek low cost  
5       stably priced renewable energy under long term contracts to hedge against and to  
6       limit exposure to high natural gas prices over at the next 15 years.” Without more  
7       specific direction from the Commission, APS may not seek sufficient renewable  
8       resources to provide a significant hedge against high natural gas prices and the  
9       Commission may not be apprised of APS’ progress until the next rate case.
- 10      • Recent polls indicate that there is overwhelming public support for increased reliance  
11      on renewable energy and energy efficiency. The public expects Arizona utilities to  
12      significantly increase their use of renewable energy resources and expects  
13      government to implement policies to achieve this goal.

14       The Commission should not let this opportunity to foster greater use of renewable energy  
15      slip away. Proposed wording for the body of the Order, Findings of Fact, and an Ordering  
16      Paragraph is set forth below:

17       APS is directed to seek to obtain at least 1,300 GWH per year of stably priced  
18       renewable energy under long term arrangements (of at least 15 years duration)  
19       starting within the period 2008 to 2010.<sup>2</sup> APS shall file for Commission review,  
20       within 4 months of the date of this Decision, a plan for acquiring renewable  
21       energy and, prior to filing the plan, APS shall consult, in a collaborative manner,  
22       with interested parties to this case to obtain input on development of the plan.  
23       APS shall also file reports with the Commission by March 1, 2009, March 1,  
24       2010, and March 1, 2011 describing its progress in meeting these goals and  
25       proposing actions to make up any deficiencies in meeting the goals. The  
      Commission may then review APS’ reports and set a course of action for APS.

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<sup>2</sup> This 1,300 GWH per year is in addition to the renewable energy required by Decision No. 67744.

1           **b)     Expand Participation in the Urban Heat Island Meeting to Include Experts**  
2           **Other than APS.**

3           The urban heat island reduction working group meeting (Finding of Fact No, 58 and the  
4           Ordering Paragraph on p. 150, lines 6 to 9) will be far more productive if it includes information  
5           that reflects more than just a presentation of APS' beliefs. WRA requests that the Order be  
6           modified so that the meeting includes presentations by knowledgeable parties other than APS  
7           and clarified to indicate that the Collaborative Working Group meetings pertain to urban heat  
8           island issues.

9           Change Finding of Fact No. 58 to read as follows (new wording is underlined,  
10          deleted wording is stricken out):

11          APS should convene a Collaborative Working Group Meeting within ~~the~~ 60 days  
12          of this Decision to address urban heat island reduction issues and programs and,  
13          upon consultation with the Collaborative Working Group members, invite  
14          presentations by knowledgeable individuals to establish ~~make a presentation~~  
15          ~~showing where APS believes the research stands and what additional information,~~  
16          if any, is needed before a heat island reduction plan can be implemented, and  
17          when that information will be obtained.

18          Change the Ordering Paragraph on p. 150, lines 6 to 9, to read as follows (new  
19          wording is underlined, deleted wording is stricken out):

20          IT IS FURTHER ORDERED that Arizona Public Service Company shall convene  
21          a Collaborative Working Group Meeting within ~~the~~ 60 days of this Decision to  
22          address urban heat island reduction issues and programs and, upon consultation  
23          with the Collaborative Working Group members, invite presentations by  
24          knowledgeable individuals to establish ~~make a presentation showing where APS~~  
25          ~~believes the research stands and what additional information, if any, is needed~~  
26          before a heat island reduction plan can be implemented, and when that  
27          information will be obtained.

28                   **SOUTHWEST ENERGY EFFICIENCY PROJECTS'**  
29                   **EXCEPTIONS TO THE RECOMMENDED OPINION AND ORDER**

30          Southwest Energy Efficiency Project (SWEET) submits the following exceptions to the  
31          Recommended Opinion and Order (ROO) in the Arizona Public Service Company (APS) rate  
32          case. SWEET urges the Commission to modify the Order as described below.

1           **1. The Commission Should Direct APS to Increase its Cost-Effective Energy**  
2           **Efficiency DSM Programs Significantly. Specifically, the Commission**  
3           **Should Adopt the SWEEP-Proposed Energy Efficiency Standard (EES) as a**  
4           **Multi-Year Goal.**

5           SWEEP has demonstrated to the Commission, in this docket (Schlegel direct and  
6           surrebuttal testimony, SWEEP post hearing and reply briefs), and in other cases and dockets  
7           before the Commission, that cost-effective energy efficiency DSM programs reduce total costs  
8           for customers and are in the public interest. No party contested these facts. By definition, every  
9           unit of cost-effective energy efficiency not acquired by APS will lead to higher total costs for  
10          customers. SWEEP testified that there were many opportunities for cost-effective energy  
11          efficiency in the APS service territory, and many APS customers to reach with energy efficiency  
12          DSM programs (Schlegel testimony and response to cross-examination, October 23, 2006;  
13          Exhibit SWEEP-JS-3). No party contested this portion of SWEEP's testimony.

14          APS must change its resource mix significantly and must reduce its exposure (and the  
15          exposure of its customers) to the uncertain and volatile prices of fossil fuels and the associated  
16          environmental and climate/carbon risks. To do so, APS must increase its reliance on cost-  
17          effective energy efficiency. Otherwise, future APS rate cases will likely be dominated by the  
18          same issues as in this case – APS financial difficulties and the pass-through of even higher costs  
19          and risks to customers.

20          APS has increased its spending on energy efficiency DSM programs significantly each  
21          year as the programs have been approved by the Commission and have ramped up, from \$3.2  
22          million in 2005, to \$10.6 million in 2006, to an estimated \$17-20 million in 2007 (APS DSM  
23          semi-annual reports for 2005 and 2006; SWEEP estimate for 2007).<sup>3</sup> Many of the energy  
24          efficiency programs were not approved by the Commission until February or April 2006, and

25          

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<sup>3</sup> Based on these DSM spending levels and the estimate for 2007, SWEEP believes APS will exceed \$30 million in  
DSM spending for 2005-2007. Therefore, SWEEP believes that no return of the unspent \$30 million 2005-2007  
base rate allowance will be necessary.

1 therefore have been in the field only about one year. Customers and market participants are  
2 responding to the new and expanded APS programs. Additional funding will be needed to meet  
3 the customer demand for cost-effective DSM programs. Staff stated that planning for future  
4 energy efficiency expansion is important (Anderson surrebuttal testimony, p.3, lines 12-13).

5 In its Order in this case the Commission should direct APS to increase its cost-effective  
6 energy efficiency programs significantly. Specifically, the Commission should adopt the  
7 SWEEP-proposed Energy Efficiency Standard (EES) as a multi-year goal, to reduce total costs  
8 for customers and to mitigate the future costs and associated risks that would otherwise be  
9 passed on to customers.

10 SWEEP urges the Commission to add the following ordering paragraphs:

11 IT IS FURTHER ORDERED that the Energy Efficiency Standard (EES)  
12 proposed by SWEEP is adopted as a multi-year goal. The APS DSM energy  
13 efficiency programs are required to: (1) achieve energy savings equal to at least  
14 5% of total energy resources needed to meet retail load in 2010, and at least 15%  
15 in 2020; and (2) reduce summer peak demand by at least 5% of total capacity  
resources needed to meet retail peak demand in 2010, and at least 15% in 2020.  
Funding to achieve the EES goals, beyond the \$10 million annually in base rates,  
shall be recovered through the DSM adjustor mechanism.

16 IT IS FURTHER ORDERED that APS shall file, in 2007, an Implementation Plan  
17 to achieve the goals of the Energy Efficiency Standard (EES), covering the 2008-  
18 2020 program years. The Implementation Plan shall include a two-year detailed  
19 plan, as a biennial plan for 2008-2009, together with a conceptual plan for the  
20 remaining period through 2020. The EES Implementation Plan shall be  
21 developed by APS with input from and review by the Collaborative DSM  
22 Working Group. The EES Implementation Plan shall be reviewed by Staff, and  
23 then be reviewed and approved by the Commission prior to implementation for  
24 2008 and future years. Since Staff will participate directly in the development of  
25 the EES Implementation Plan as part of the DSM Collaborative Working Group,  
Staff shall complete its review within 60 days of the Plan filing by APS.

**2. Several Clarifications are Needed Regarding the Energy Efficiency DSM  
Funding, Budgets, and Treatment of Funding Carryover.**

First, the energy efficiency DSM spending requirements set forth in Decision No. 67744  
and the Settlement Agreement were *at least* \$16 million annually (on average) and *at least* \$48



1 million over the three-year period of 2005-2007 (emphasis added). The \$16 million and \$48  
2 million were set forth as minimum spending requirements, not as budget caps. It was recognized  
3 that the new DSM programs would need time to ramp up, and therefore a three-year spending  
4 requirement was used, with DSM funding above the \$30 million in base rates to be recovered  
5 through the DSM adjustor mechanism.

6 Second, Staff did not oppose the carryover of the unspent portion of the \$48 million  
7 spending requirement. Staff only clarified that any underspending of the \$30 million portion in  
8 base rates must be returned to ratepayers. (Anderson surrebuttal testimony, pages 2-3.)

9 Third, the proposal of APS and SWEEP to carryover any unspent portion of the \$48  
10 million 2005-2007 spending requirement to future years is not negated by Staff's clarification  
11 regarding the \$30 million in base rates. In fact, any underspending of the \$48 million above the  
12 \$30 million in base rates can and should be carried over to be spent on energy efficiency DSM  
13 programs in future years. SWEEP recommends that the Commission require APS to spend the  
14 carryover funding on the energy efficiency programs already approved by the Commission, or  
15 propose the allocation of a portion of the funding carryover to new or revised energy efficiency  
16 programs in its biennial DSM plan for 2008-2009.

17 To address the above, SWEEP requests the following clarifications to the first paragraph  
18 in section E on DSM, on pages 88-89 of the ROO (new wording is underlined, deleted wording  
19 is stricken):<sup>4</sup>

20 Pursuant to Decision No. 67744 and the Settlement Agreement, APS was ordered  
21 ~~committed~~ to spend at least \$48 million on demand-side management programs  
22 ("DSM") by year-end 2007. Base rates include \$10 million per year of funding,  
23 and expenditures above that (at least \$6 million annually on average) are deferred  
24 and collected through a DSM adjustor mechanism. This level of spending will

24 <sup>4</sup> Lines 13-14 on p. 89 of the ROO should also be clarified, as follows: "We agree with Staff and APS that the  
25 current required level of at least \$16 million should not be increased at this time, except for the carryover of unspent  
2005-2007 funding. If the Commission adopts the SWEEP-proposed EES, additional clarifications to this sentence  
would be needed.

1 continue at the current level until APS files, and the Commission approves,  
2 modifications to the program design and budget requirements. According to APS,  
3 as a result of delayed DSM approvals, the time it takes to ramp up DSM spending,  
4 and the lag inherent with spending on energy efficient new construction projects,  
5 APS will not spend the \$48 million by the end of 2007. APS and SWEEP  
6 propose that any unspent funds of the \$48 million 2005-2007 spending  
7 requirement should be carried over and spent in subsequent years, to achieve the  
8 level of spending required by Decision No. 67744 and the Settlement Agreement.  
9 Staff clarifies the base rates portion of any potential ~~opposes the~~ "carry over" and  
10 cites to Decision No. 67744 which requires that any unspent amount of the \$30  
11 million in base rates should be credited to the balance of the Demand Side  
12 Management Adjustment Clause ("DSMAC") account if APS does not spend at  
13 least \$30 million of the base rate allowance for approved and eligible DSM-  
14 related items during 2005-2007. According to Staff, this "under-funding" of the  
15 base rates amount is returned to ratepayers. We agree that to the extent that APS  
16 has not spent at least \$30 million in base rates by year end 2007, the DSMAC  
17 should be credited, as required by Decision No. 67744. We agree with APS and  
18 SWEEP that any unspent amount of the \$48 million 2005-2007 spending  
19 requirement, above the \$30 million in base rates, should be carried over and spent  
20 in subsequent years. APS should spend the carryover funding on the energy  
21 efficiency programs already approved by the Commission, or may propose the  
22 allocation of a portion of the funding carryover to new or revised energy  
23 efficiency programs in its biennial DSM plan for 2008-2009.

24 In addition, SWEEP urges the Commission to add the following ordering paragraph:

25 IT IS FURTHER ORDERED that any unspent funds of the \$48 million 2005-  
2007 energy efficiency DSM spending requirement adopted in Decision No.  
67744 and set forth in the Settlement Agreement shall be carried over and spent  
on energy efficiency programs in subsequent years, subject to the following  
exception for the \$30 million in base rates. If APS has not spent at least \$30  
million in base rates by year end 2007, the DSMAC shall be credited, as required  
by Decision No. 67744, for the difference between the 2005-2007 spending and  
the \$30 million in base rates. APS shall spend the carryover funding on the  
energy efficiency programs already approved by the Commission, or may propose  
the allocation of a portion of the funding carryover to new or revised energy  
efficiency programs in its biennial DSM plan for 2008-2009.

**3. The Commission Should Require APS to Set Energy Efficiency DSM Goals  
Based on Energy Savings and Peak Demand Reductions.**

SWEEP testified that it is important to focus primarily on the effects and impacts of  
energy and utility policies for setting DSM goals, not primarily on the funding or spending  
levels. Simply spending money, even cost-effectively, should not be the primary focus of future

1 goals for energy efficiency programs. (Schlegel surrebuttal testimony, p. 3-4). Instead, savings  
2 goals or targets should be used.

3 SWEEP requests the following changes to lines 24-27 on page 90 of the ROO (new  
4 wording is underlined, deleted wording is stricken):

5 ~~While we~~ We see merit in the position that savings targets or goals, and not just  
6 spending, is what should be important and driving DSM programs. Therefore,  
7 APS should propose energy efficiency DSM program goals based on energy  
8 savings and peak demand reductions in its biennial DSM plan for 2008-2009. ~~we~~  
9 ~~agree with APS and Staff that we need time to evaluate our current DSM structure~~  
10 ~~before we make such substantial changes as recommended by SWEEP.~~

11 In addition, SWEEP urges the Commission to add the following ordering paragraph:

12 IT IS FURTHER ORDERED that DSM program goals should be based on  
13 savings and not just on spending. Therefore, APS shall propose energy efficiency  
14 DSM program goals based on energy savings and peak demand reductions in its  
15 biennial DSM plan for 2008-2009.

16 **4. The Record Summarized in the ROO is Incomplete in that SWEEP Positions**  
17 **on Two Important Issues are not Documented in the Discussion.**

18 Specifically, SWEEP supported the DSM performance incentive proposed by APS and  
19 the related recommendations of Staff, and SWEEP opposed the APS-proposed pro forma  
20 adjustment to test year data to recover net lost revenues (Schlegel surrebuttal testimony, pages 6  
21 and 7; SWEEP post-hearing and reply briefs). These two SWEEP positions should be included  
22 in the ROO on pages 30-31 and 89-90 to complete the record.

23 DATED this 15<sup>th</sup> day of May, 2007.

24 ARIZONA CENTER FOR LAW IN  
25 THE PUBLIC INTEREST

By 

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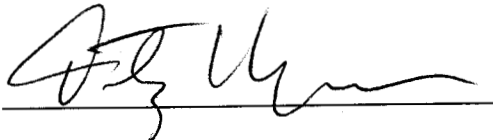
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12 All Parties of Record

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A handwritten signature in black ink, appearing to be "J. L. ...", is written over a horizontal line.